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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3249 OF 2007

M/s. Dhariwal Industries Ltd. ... Petitioner

V/s

Pune Zilla Mazdoor Sangh ... Respondent

Mr. C.U. Singh with Mr. A.D. Patwardhan for the petitioner.

Mr. S.M. Dharap with Mrs. Anjali Helekar for the respondent

CORAM: SMT. NISHITA MHATRE, J.

DATED: 13TH AUGUST, 2007.

P.C.:

1. The Industrial Court, Pune, by its order dated 30.3.2007 has directed the petitioner to reinstate the workers listed in Annexures A to D of the complaint and to pay them 50% of the wages for the intervening period from the date of the complaint till the date of the order and 50% of the salary for the remaining period of service in cash as compensation.

2. The complainant union i.e. the respondent herein had filed a complaint under Items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, contending that the

petitioner in the present petition had not permitted the workmen to resume duty after they availed of leave on one of the four days' i.e. on 4.4.2001, 6.4.2001, 7.4.2001 and 8.4.2001. They had enjoyed leave in four different groups enlisted in Annexures A to D of the complaint. It appears from the order of the Industrial Court that only the following issues have been framed:-

> "(1) Whether the complainant union proves that the respondents have committed the unfair labour practice by refusing to offer work to the workers respectively on 4.4.2001, 6.4.2001, 7.4.2001 and 8.4.2001 included in Annexures A to D ?
>
> (2) Whether the reliefs prayed for by the complainant union can be granted ?"

3. The main grievance in the complaint is that the workmen were not allowed to report for duty and resume work after 4.4.2001, 6.4.2001, 7.4.2001 and 8.4.2001. No issue in this regard has been framed. Despite this, the Industrial Court concluded that an unfair labour practice had been committed by the employer because the workmen had not been permitted to resume work. Instead the Industrial Court has held that the respondent union

had proved that the petitioner had committed an unfair labour practice by refusing to offer work on the aforesaid dates. In paragraphs 11 and 12, the Industrial Court has observed that though the workers were on an indefinite strike, no action had been taken by the Company. While deciding the first issue against them, the Industrial Court has held that the petitioner refused work on the aforesaid dates. Thereafter, the Industrial Court has observed that the workers were not allowed to resume work. The Industrial Court has misdirected itself while concluding that the petitioners are liable to reinstate and pay wages to the workmen at the rate of 50%, when there was no prayer for reinstatement. On the contrary, respondent union had asked for a declaration that the petitioner had wrongly and illegally refused them permission to resume their duty and not allotted them work after the aforesaid dates. As stated earlier, no such findings could be arrived without an issue in that regard having been framed.

4. In this view of the matter, the impugned order is set aside.

5. The Industrial Court shall frame fresh issues with the assistance of the parties and dispose of the

complaint by 31.12.2007.

6. Parties to remain present before the Industrial Court on 27.8.2007.

7. Petition disposed of accordingly.

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